

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARC E. OLIVER, d/b/a GULF COAST ENVIRONMENTAL AND RECOVERY, and T.M. JEMISON CONSTRUCTION CO. INC. d/b/a JEMISON MARINE, INC., Plaintiffs,	: : : : :	CA 11-0223-KD-C
MIDSOUTH BANK, N.A., Plaintiff/Counter-Defendant	: :	IN ADMIRALTY <i>In Personam and In Rem</i>
vs.	: :	
M/V BARBARY COAST, her engines, tackle, furniture, and appurtenances, etc., <i>In Rem</i>, and RODD CAIRNS, an individual, and ATCHAFALAYA MARINE, LLC, <i>In personam</i>, Defendants/Counter-Plaintiffs/ Third-Party Plaintiffs,	: : : : : : :	
vs.	: :	
EAGLE RIVER TOWING, L.L.C., p/k/a or a/k/a EAGLE INLAND TOWING, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, LOUISIANA LIMESTONE & LOGISTICS, L.L.C., and CURTIS BUFORD, Third-Party Defendants.	: : : : : : :	

ORDER

This matter is before the Court on a “Motion to Dismiss With Prejudice” filed by Third-Party Defendants Louisiana Limestone & Logistics, LLC (“Louisiana Limestone”) and Curtis Buford (“Buford”). (Doc. 190). Specifically, Louisiana Limestone and Buford move to dismiss their claims, with prejudice, against Eagle Inland Towing, LLC, Eagle River Towing, LLC, Garrell A. Chiasson, Sr., National Union Fire Insurance Company of Pittsburgh, PA,

Quality Diesel Services, Inc. and Midsouth Bank, N.A. Louisiana Limestone and Buford additionally move the Court “to release” Rodd Cairns and Atchafalaya Marine, LLC “for certain claims as set forth in the Release executed by said parties, but reserve their rights to pursue all remaining claims” against them “not set forth in their complaint and not expressly identified in the Release.” Louisiana Limestone and Buford assert that the motion is filed with the consent of all parties.

At the outset, the motion filed by Louisiana Limestone and Buford is construed as a Rule 41(a)(2) voluntary motion to dismiss “at the plaintiff’s request only by court order, on terms that the court considers proper[,],” given that the motion is not signed by all parties to this case, is not a joint stipulation, and the opposing parties have served answers. (Docs. 118, 119).

Third-Party Defendants Louisiana Limestone and Buford filed a First Amended Answer to Third-Party Plaintiffs’ Second Amended Third-Party Complaint, and counterclaims against Third-Party Plaintiffs Atchafalaya Marine, LLC and Rodd Cairns as well as original plaintiffs Marc. E. Oliver individually and d/b/a Gulf Coast Environmental and Recovery, LLC, even though the pleading is styled as also asserting crossclaims against Third-Party Defendants Eagle Inland Towing, LLC,¹ Garrell A. Chiasson, Sr., and National Union Fire Insurance Company of Pittsburg, PA. (Doc. 107 at 1). The pleading does not actually allege any claims against Eagle Inland Towing, LLC, Eagle River Towing, LLC, Garrell Chiasson, Quality Diesel, Midsouth Bank, or National Union (although apparently the movants mistakenly believe such given the present motion). Rather, the pleading asserts only four (4) Counterclaims (and demands judgment) against: 1) original plaintiffs and counterclaims defendants Marc E. Oliver

¹ The Court also notes that no claims were alleged against Eagle River Towing, LLC, who is referenced in the present motion (Doc. 190 at 2).

individually and d/b/a Gulf Coast Environmental and Recovery, LLC for conversion (Count One), tortious interference with contractual and business relations (Count Two) and fraud (Count Three); and 2) against original defendants Atchafalaya and Cairns for breach of contract (Count Four). (Doc. 107 at 27-32).

In light of the foregoing, that portion of Louisiana Limestone and Buford's motion to dismiss (Doc. 190) the claims purportedly asserted against Eagle River Towing, LLC, Eagle Inland Towing, LLC, National Union Fire Insurance Company of Pittsburgh, PA, Garrell A. Chiasson, Sr.,² Quality Diesel Services, Inc. and/or Midsouth Bank, N.A., is **MOOT** because no such counterclaims exist in this case. As to Louisiana Limestone and Buford's request that the Court "release...[only] certain" of its claims against Cairns and Atchafalaya, one (1) counterclaim for breach of contract (Count Four) has been alleged against these parties, not multiple claims as suggested. As such, the Court construes this request to "release" as a motion to dismiss this sole counterclaim with prejudice. Accordingly, that portion of the motion (Doc. 190) is **GRANTED** such that Louisiana Limestone and Buford's breach of contract counterclaim (Count Four) against Cairns and Atchafalaya (as set forth in Doc. 107), is hereby **DISMISSED with prejudice**.

DONE and ORDERED this the **21st** day of **March 2012**.

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE

² Mr. Chiasson is simply referenced in the amended answer as the managing member of Eagle Inland Towing, LLC. (Doc. 107 at 21 at ¶119).